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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

JUN 15 1994

In the Matter of )  
 )  
Implementation of Sections 3(n) )  
and 332 of the Communications Act ) GN Docket No. 93-252  
 )  
Regulatory Treatment )  
of Mobile Services )

**RESPONSE OF WATERWAY COMMUNICATIONS SYSTEM, INC.  
TO PETITIONS FOR RECONSIDERATION**

Martin W. Bercovici  
**KELLER AND HECKMAN**  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001

Due: June 16, 1994

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**RESPONSE OF WATERWAY COMMUNICATIONS SYSTEM, INC.  
TO PETITIONS FOR RECONSIDERATION**

Waterway Communications System, Inc. (WATERCOM), respectfully herewith submits its Response to the Petitions for Reconsideration and/or Clarification filed by GTE Service Corporation and the Personal Communications Industry Association (PCIA) regarding application of TOCSIA to commercial mobile service providers, and to the petition filed by MCI Telecommunications Corporation concerning tariffing of services.<sup>1/</sup>

WATERCOM wholly concurs with GTE and PCIA in their arguments that the record well supports forbearance from application of TOCSIA to CMRS providers. WATERCOM detailed in its Comments in this proceeding, and also in support of the Petition for Declaratory Ruling filed by GTE, that (i) the problems addressed by TOCSIA did not arise in the mobile services industry and TOCSIA thus was not intended to apply to mobile service providers in general and maritime

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<sup>1/</sup> 59 Fed. Reg. 28386 (June 1, 1994).

carriers in particular, (ii) compliance with TOCSIA will impose substantial technical, operational and financial burdens upon WATERCOM, for a de minimis amount of traffic, (iii) the enforcement of TOCSIA is not necessary for the protection of consumers, and (iv) weighing the substantial burdens against the non-existent benefits, granting exemption would be consistent with the public interest.

As detailed by GTE in its Petition, the facts and arguments advanced by WATERCOM, GTE and others were unrefuted in that no party demonstrated a public need or public benefit from applying TOCSIA to CMRS providers; however, the record on this issue was completely ignored by the Commission in the treatment of the TOCSIA issue in the rulemaking. The Commission necessarily did not reach an adverse determination, i.e., that the public interest requires the enforcement of TOCSIA to CMRS providers, inasmuch as the Commission has re-raised the TOCSIA issue of its own motion in its further rulemaking in GN Docket No. 94-33, the follow-on rulemaking to the instant proceeding. In doing so, however, the Commission has elected a "clean slate" approach, summarily reciting, without any factual discussion, that the record in this proceeding was "insufficient to justify a finding [of] forbearance."<sup>2/</sup>

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<sup>2/</sup> GN Docket No. 94-33 at ¶ 23.

WATERCOM has pursued exemption from TOCSIA independently through a Petition for Reconsideration of the Bureau Chief's decision in the GTE proceeding.<sup>3/</sup> WATERCOM nonetheless continues to support exemption in this rulemaking. Granting the requested exemption would resolve uncertainty among CMRS providers, as well as be administratively efficient for the Commission, eliminating the redundant treatment of this very same issue in the pending reconsideration on the GTE Petition and in the GN Docket No. 94-33 further forbearance NPRM.

Regardless of the proceeding in which the Commission considers the forbearance issue, the facts will not change: operator services as defined by TOCSIA are not a separate and discrete service function, but rather -- for those customers requiring operator assistance or third-party billing -- an inherent part of the provision of mobile service; operator services cannot functionally be disaggregated from the mobile service, so to give the consumer the option of choice of "operator services provider" without incurring the same -- or greater -- costs; the user in any event will incur charges from a mobile service carrier such as WATERCOM for the connection between

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<sup>3/</sup> See n.423 commenting that exemption through reconsideration or alternatively waiver in the GTE Declaratory Ruling proceeding is currently pending.

the mobile unit and the CMRS provider's switch; customers know, through identification at the mobile unit, the identity of the CMRS provider they are utilizing and its rates, and users have no expectation that their calls will be handled in a different manner or by any different carrier; the portion of WATERCOM's traffic subject to the TOCSIA regulations is de minimis in nature, in the order of magnitude of one percent; and, it would be extremely complicated and expensive to install call-branding or otherwise comply with TOCSIA by virtue that the entire network would have to be equipped to comply with the TOCSIA regulations since the network does not distinguish between subscribers with operating accounts and transient customers utilizing third-party billing. The record presently compiled before the Commission fully addresses these considerations; and thus, the issue is ripe for determination in this rulemaking.

Second, WATERCOM supports MCI's petition requesting the Commission to forbear from tariff filing on a permissive rather than a mandatory basis. As MCI notes in its Petition, tariffs serve a valuable purpose in providing a single source statement of terms and conditions of service offerings, including regulations governing the use of service and carrier liability. Tariffing is valuable to both carriers and customers in that it serves to minimize

conflict and misunderstandings. WATERCOM has no quarrel with those who may choose to forgo tariffs in the rendition of domestic service; however, WATERCOM firmly believes that the Commission should continue to accept tariffs for filing by those carriers which choose to adhere to the statutory admonition and utilize tariffs in the manner traditionally contemplated for common carriers holding themselves out to render service indiscriminately to the public at large.

**WHEREFORE, THE PREMISES CONSIDERED,** Waterway Communications System, Inc. respectfully urges the Federal Communications Commission to (i) FORBEAR from application of TOCSIA to CMRS providers, and (ii) FORBEAR on a permissive basis from enforcing the tariff filing requirements of Section 203 of the Act, thereby permitting those who desire to maintain tariffs to do so at their option.

Respectfully submitted,



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Martin W. Bercovici  
**KELLER AND HECKMAN**  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001

Attorney for Waterway  
Communications System, Inc.

June 16, 1994

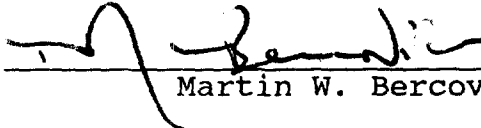
CERTIFICATE OF SERVICE

I, Martin W. Bercovici, hereby certify that the foregoing "Response to Petitions of Reconsideration" was mailed, ~~at~~ United States first class mail, postage prepaid, this 13 day of June, 1994, to

Gail L. Polivy, Esquire  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

Mark J. Golden, Esquire  
Personal Communications Industry Association  
1019 19th Street, N.W.  
Suite 1100  
Washington, D.C. 20036

Larry Blosser, Esquire  
Donald J. Elardo, Esquire  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

  
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Martin W. Bercovici